CHAPTER I
INTRODUCTION

1.1 Introduction

The concept of Human Rights has arisen from that of natural rights of all human beings. The belief that every person by virtue of his humanity is entitled to certain natural rights throughout the history of mankind. It can be traced back some thousands of years back from the Hammurabi Code to the Magna Carta, the French Declaration of Human Rights and the American Bill of Rights. The underlying idea of such rights are that fundamental principles should be respected in the treatment of all men, women and children as it exists in some form in all cultures and societies. The contemporary International statement of those rights is the Universal Declaration of Human Rights. The responsibility of governments is to protect the human rights proclaimed by this declaration. Under the provisions of Civil and Political Rights, all governments are to protect the life, liberty and security of their citizens. They should guarantee that no-one is enslaved and that no-one is subjected to arbitrary arrest and detention or to torture. The rights such as freedom of thought, conscience, religion, and freedom of expression are to be considered as Human Rights. Since the declaration does not have the necessary legal power, not being an International treaty does not determine de jure obligations for the states. Actually, its provisions have been included in the constitutions and internal laws of states and therefore it gained special importance.

Human rights have developed in a dialectical process of various revolutions and ‘generations’. It began with the bourgeois revolutions against absolutism, feudalism and the power of the Roman Catholic Church, legitimated by the ideas of the Enlightenment, rationalistic natural law, the social contract, constitutionalism and liberalism in Europe and North America. These culminated in the establishment of civil and political rights to life, liberty, property and democratic participation in the constitutions of the nation-states of the 18th and 19th centuries. In the twentieth century, the protection of human rights had begun to develop as an issue of concern to the international community. The League of Nations was established at the conclusion

1 http://en.wikipedia.org/wiki/history of human rights"
of First World War and attempts were made to develop an international legal frame work to protect minorities, along with international monitoring mechanisms. The horrors perpetrated during the second world war motivated the international community to ensure that such atrocities would never be repeated and to provide the impetus for the modern movement and to establish an International system of binding human rights protection. Thus International protection of human rights came into existence. The Magna Carta, 1215, is the most significant constitutional document of human history. The main theme of it was protection against the arbitrary acts by the king. The 63 clauses of the Charter guaranteed basic civil and legal rights to citizens, and protected the barons from unjust taxes. The English Church too gained freedom from royal interferences. King John of England granted the Magna Carta to the English barons on 15th June 1215. The king was compelled to grant the Charter, because the barons refused to pay heavy taxes unless the king signed the Charter.2

The American and French Revolution gave further impetus to the struggle of human rights. The next source and avenue for the development of the philosophy of human rights is the English Bill of Rights, enacted on December 16, 1689, by the British Parliament. The British Parliament declared its supremacy over the Crown in clear terms. The English Bill of Rights declared that the king has no overriding authority. The Bill of Rights codified the customary laws, and clarified the rights and liberties of the citizens. The first colonies to revolt against England were the thirteen States of America. These states declared their independence from their mother country on 4th July 1776, American Declaration of Independence, 1776. The declaration changed the king colonies. The declaration of independence has great significance in the history of mankind as it justified the right to revolt against a government that no longer guaranteed the man’s natural and inalienable rights. After that the U.S. Bill of Rights, came into force in 1791. The Constitution was enacted on 17th September 1787. The most prominent defect of the original constitution was the omission of Bill of Rights concerning private rights and personal liberties. Madison therefore proposed as many as twelve amendments in the form of Bill of Rights. Ten of these were ratified by the State legislatures. These ten constitutional amendments came to be known as the Bill of Rights. The overall theme of the Bill of Rights is that

2 http://en.wikipedia.org/wiki/history of human rights
the citizen be protected against the abuse of power by the officials of the States. The French Declaration of the Rights of Citizens in 1789, the fall of Bastille and the abolition of feudalism, serfdom and class privileges by the National Assembly ushered France into a new era. On 4th August 1789, the National Assembly proclaimed the Rights of Man and of the Citizens. The Rights were formulated in 17 Articles. The Declaration of the Rights of Man and of the Citizen has far reaching importance not only in the history of France but also in the history of Europe and mankind. The declaration served as the death warrant for the old regime and introduced a new social and political order, founded on the noble and impressive principles.3

International protection for human rights is governed by the International Bill of Human Rights which consists of the United Nations Declaration of Human Rights (UNDHR, 1948), which defines specific rights and their limitations, the International Covenants on Economic, Social and Cultural Rights (1966) and the International Covenant on Civil and Political Rights (1966), which place on states the obligation to promote and protect human rights. The Covenants are legally binding on those states that have ratified them. The UNDHR, which is the key document, is conceived as "a common standard of achievement for all peoples and all nations": Over the time it has become a yardstick to measure the degree of respect for, and compliance with, International human rights standards. It is a fundamental source of inspiration for national and international efforts to promote and protect human rights and fundamental freedoms. It has set the direction for all subsequent work in the field of human rights. The rights of individuals as part of a community have been addressed throughout the centuries by customs or laws in different parts of the world. Though the combination of the universal commitment to equal dignity and freedom with the political principle of the rule of law arose in the West a few hundred years ago, it is only with the adoption in 1948 of the United Nations Declaration of Human Rights it has been enriched. The Universal Declaration of Human Rights (UDHR), 1948, defines human rights as “rights derived from the inherent dignity of the human person.” Human rights when they are guaranteed by a written constitution are known

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as “Fundamental Rights” because a written constitution is the fundamental law of the state\(^4\).

Though all human beings have human rights as they are inalienable but under certain conditions the protection which is given to human beings are curtailed. This is imposed by rule of law. The attitude of society towards prisoners may vary according to the object of punishment and social reaction to crime in a given community. If the prisons are meant for retribution or deterrence the condition inside them shall be punitive in nature, inflicting greater pain, suffering and imposing severe restrictions on inmates. But if it taken in a modern progressive views the things are different. When, crime is considered as a social disease and favors for treatment of methods through non penal methods, then question of protection of human rights of prisoners will take a significant turn. The prisoner’s protection laws were already enacted in India, but in the era of globalization, when crimes are increasing and judiciary has given the punishments so prisoners are also increasing proportionately in prison. Whatever they have done or are accused of doing, these prisoners remain human beings like the rest of us, concerned for their families and children and seeking affection and solace themselves. Kindness and compassion are extremely important in every area of life, whether it involves prisoners, prison guards or victims of crime. While harboring hatred and ill will is futile, fostering cooperation, trust and consideration is far more constructive. That is the reason why a great concern was shown to the prisoners and their human rights protection.

The prison is used as an institution to treat the criminal as a deviant; there would be lesser restrictions and control over him inside the institution. The modern progressive view, however, regards crime as a social disease and favors treatment of offenders through non penal methods such as probation, parole, open jail etc. whatever be the reaction of society to crime, the lodging of criminals in prison gives rise to several problems of correction, rehabilitation and reformation which constitute vital aspects of prison administration. Punishment during the Hindu and Mughal period in India was to deter offenders from repeating crime. The recognized modes of punishment were death sentence, hanging, and mutilation, whipping, flogging, branding or starving to death. Particularly, during the Mughal rule in India the

condition of prisons was awe fully draconic. The prisoners were ill-treated, tortured and subjected to most inhuman treatment. They were kept under strict surveillance and control. Thus the prisons were places of terror and torture and prison authorities were expected to be tough and rigorous in implementing sentences. Indian prisons clearly reflect the changes in society’s reaction to crime from time to time. The system of imprisonment represents a curious combination of different objectives of punishment. Thus prison may serve to deter the offender or it may used as a method of retribution or vengeance by making the life of the offender miserable and difficult. The isolated life in prison and incapacity of inmates to repeat crime while in the prison fulfils the prevention purpose of punishment. It also helps in keeping crime under control by elimination of criminals from the society. That apart, prison may also serve as an institution for the reformation and rehabilitation of offenders.

The system of imprisonment originated in the first quarter of nineteenth century. The first time in India, Lord Macaulay drew attention of the government of India basing on his suggestions appointed a committee in 1836 to enquire the prison conditions and prison administration. The committee submitted their report after enquired the existing conditions in prisons, but the committee recommendations rejected due to all reforming influences such as moral and religious teaching, Education or any system of rewards for good conduct. In 1862 Jail enquiry committee appointed to study sanitary conditions in Indian prisons, the committee suggested that the need for proper food and clothing for the prisoners and medical treatment for ailing prisoners. Later, the third Jail committee appointed in 1877, this committee given suggestions basing on this committee suggestions The Prison Act, 1894 came into existence in India. The Indian Jails reforms committee appointed by the British in 1919-20 for the prisoner’s conditions.

Initially, prisons were used as detention houses for under-trials. Persons who were guilty of some political offence or war crime or who failed to pay their debts or fines were lodged in prison cells with a view to extracting confession from them or securing the payment of debts or fines. Subsequently, with the advancement of knowledge and civilization, the conditions of prisons also improved considerably.

7 ibid
After the Independence to India, the reformative adopted, in 1949 Pakwasa Committee suggestions to accept the prisoners should be used for work and pay reasonable wages to them. The Government of India appointed a committee on All Indian Jail Manual in 1957, this committee recommendations played an important role in Indian Jail system. The jails shifted from central list to state list, used reforming methods like parole and probation for lesser punishment prisoners. After in 1980, All India Jail Reforms Committee appointed, Justice A.N.Mulla appointed as chairmen. This committee recommendations to setup a separate homes for juveniles, mental ill prisoners were to shift to hospitals, to establish National Prison Commission, allow the public and media to visit the prisons, undertrail should be separated from the convicted prisoners and etc., Justice V.R.Krishna Iyer was appointed by the Government of India on National Expert Committee on Women on Custodial Justice for Women in 1987 and different states also appointed the committees in their states for better treatment and proper care for the prisoners, because the states having a constructional obligation towards the prisoners for their protection of rights in prisons.

The present day penology centers round imprisonment as a measure of rehabilitation of offenders, the prisons are no longer mere detention houses for the offenders but they seek to reform inmates for their future life. The modern techniques of punishment lay greater emphasis or reformation, correction and rehabilitation of criminals. The criminal justice delivery system in India saw more than 0.2 million under trial prisoners being neglected in jail for many years, in many cases it exceeded the maximum sentence for the crime which they had committed. More ever, they did not have anyone to stand as guarantors nor assets to furnish as bail bonds, the poor continued to suffer in prisons. There have been cases where the amount of bail is disproportionately high. One such case even went to the Supreme Court. In India the judicially enforceable fundamental rights which encompass all civil and political rights and some of the rights of minorities are enshrined in part III of the Constitution (Articles 12 to 35). These include the right to equality, the right to freedom, the right against exploitation, the right to freedom of religion, cultural and educational rights and the right to Constitutional remedies. Article 21 of the Constitution guarantees the right of life and personal liberty and thereby prohibits any inhuman, cruel or degrading treatments to any person, whether he is a national or foreigner. The
Supreme Court of India, by Article 21 of the Constitution, has developed human rights jurisprudence for the preservation and protection of prisoners’ right to human dignity.\(^8\) There is no specific provision in constitution which deals with prisoners rights. Hence the Supreme Court played an important role to adopt and interpreted Article 14, 19, 20, 21 and 22 of part III and Article.38,39,39A and 42 in part IV in spell out the various fundamental rights available to the prisoners.\(^9\) A prisoner, he be a convict or under-trial or a detune, does not cease to be a human being.\(^10\) They also have all the rights which a free man has but under some restrictions. Just being in prison doesn't deprive them of their fundamental rights. Even when lodged in jail, they continue to enjoy all their fundamental rights. The prisoner’s condition is not satisfactory in prisons, even though, the major steps taken by the government but in implementation those are not fulfilled. In the International scenario it is the Geneva Convention which deals with specifically prisoners of war. For the first time the Hague convention of 1907 certain rules relating to the treatment of prisoners of war. Later on, this convention was superseded by the Geneva Convention of 1929 on the prisoners of war. The convention of 1929 in its turn was superseded by Geneva Convention relating to the prisoners of war, 1949. This convention contains exhaustive provisions relating to the treatment of prisoners of war.

1.2 Significance of the problem:

A society that believes in the worth of the individuals can have the quality of its belief judged, at least in part, by the quality of its prisons and prove services and of recourses made available to them. It’s the human life that necessitates human rights.

Being in a civilized society organized with law and a system as such, it is essential to ensure for every citizen a reasonably dignified life. Thus every right is a human right as that helps a human to live like a human being. Even if the person is deprived of some of his rights due to commission of some wrongs, he is entitled to rights unaffected by the punishment for wrongs. Especially when the principles and objectives of criminology and penology are acquiring a human face the enforcement

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\(^8\) http://www.legalservicesindia.com
\(^9\) Maneka Gandhi Vs The Union of India, AIR 1978, SC 597
of human rights assume a very great relevance. Simply because a person is “undertrail or convicted, his right cannot be discarded as a whole.

A man on becoming a prisoner, whether convict or under trail, does not cease to be human being. Though the prisoners can’t be traced as animals yet the barbarous treatment sometimes given to them in prisons is not qualitatively human compared to the one given to the caged inmates. The grim scenario of prison justice assumes in human misanthropic fragrance when the intellect of prisoners is blemished. Personhood of prison is fortified and they are forced to lose their integrity and individuality and thereby compelling them to become the right less slaves of the state. It become gruesome indeed and calls for interference of judicial power as constitutional sentinel, when the jurisprudence of prison justice becomes an escalating torture and the violent violation of the human rights is perpetrated by agencies of the state. At present the rights of the prisoners has become a burning topic and so it is very much essential to study about the protection of human rights of prisoners. Hence, the researcher has selected this problem as the protection of human rights by the prisoners, can be claimed only when the prisoners knows about their rights. So the emphasis is also made by the researcher on the subject of creating awareness of human rights among the prisoners by keeping its growing importance and need in mind. Also he emphasized about the measures taken in prison for their protection.

1.3 Scope and Limitation of the Study:

As the subject remained largely unexplored, the researcher found it difficult to obtain data to serve as source reference material. The scope of the subject is wide and coverage is extensive. The conclusions tend to be somewhat general and therefore, must be viewed with caution. The researcher mainly concentrated on the socio-legal aspects of the problem, and the study therefore may not purport to be whole and a complete study. However, the researcher left no stone unturned in his effort to gather facts and information necessary for the study.

The present study is aimed to collect information through both primary and secondary sources with regard to protection of human rights of prisoners and creating awareness among them. Hence, the researcher has selected the area of the study
limiting to three central jails of Rayalaseema, Costal Andhra and Telangana in the districts of Kadapa, Nellore and Hyderabad.

1.4 Objectives of the study:

- To study how the human rights legislations have facilitated a change in the approaches of correctional systems in Indian prisons.
- To trace out the instruments for the protection of human rights of prisoners in National and International perspective.
- To make a brief study of constitutional provisions dealing with protection of human rights of prisoners in India.
- To know the judicial sensitivity and activism regarding the protection of rights of prisoners, and Supreme Court cases relating to prisoners protection.
- To study deficiencies in implementation of their existing rights in prisons, and discuss the problems of prisoners and the procedure for implementation of their rights in the selected Jails of Kadapa, Nellore and Charlapalli.
- To suggest suitable suggestions that may adopt for protecting human rights of the prisoners.

1.5 Hypotheses

The following are the important hypotheses formulated to carry out the research:

- To enforce and protect the human rights of the prisoners, which is constitutional guarantee and involves an obligation on the part of the state for protecting these human rights.
- Various judgments have been passed by Indian Supreme Court recognizing the rights of the prisoners, which have resulted in amendments for the existing legislations for protection of prisoners.
- Though various rights were granted to prisoners, in reality, they do not reach the prisoners as many of them do not know their rights.
• The measures has been taken by the state to protect the human rights of prisoners by guaranteeing them certain basic rights.
• Prolonged detention of undertrail prisoners, unsatisfactory living conditions, lack of treatment programmes and many more incidents in prisons resulted in violation of human rights of prisoners.

1.6 Methodology

The data for the study is collected both from the primary sources as well as secondary sources. The researcher has selected the relevant data from various vertical and horizontal sources like law books, journals, periodicals and other books relevant to the study. To conduct the primary study, the researcher has operated questionnaire and interview methods. The questionnaires were distributed to the respondents personally and were collected from them by giving sufficient time to fill up the questionnaire. The doubts raised by the respondents were clarified by the investigator some of them who are illiterates were interviewed by following purposive sampling method. The researcher mainly concentrated on the rights of the prisoners and implementations of their rights, and the study therefore may not purport to be whole and a complete study. However, the researcher left no stone unturned in his effort to gather facts and information necessary for the study.

The present study is aimed to collect the information through primary and secondary sources with regard to implementation of prisoner’s rights in general and human rights of prisoners, awareness of their rights among prisoners and to collect the relevant statistical data for the purpose of the study. Hence, the researcher has selected three central jails of kadapa, Nellore and cherlapalli in Andhra Pradesh. The collected data was analyzed and mentioned in appropriate chapters.

1.7 Review of Literature

Literature in connection with the present problem is reviewed from the earlier studies; published books are the main sources which are covered for the purpose to ascertain the views and conclusion of earlier works regarding the study of “Human rights of Prisoners in A.P. – A study”.

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• Micheline R. Ishay, The History of Human Rights form Ancient times to the Globalization Era, orient longman pvt ltd, New Delhi, 2008 deals with the development of a liberal and secular perspective on human rights.

• Ruzbeh N. Bharucha, “Shadows in cages mother and child in Indian prisons”, fushion books, New Delhi, 2005, deals with imprisoned mothers and children and the conditions in prisons.


• R.K. Singh, Director General of NCRB, Prison statistics India 2011, National central records bureau, ministry of home affairs, New Delhi, 2011, deals with statistical information about the jail system and prisoners.


• Report of the Indian Jails Committee, (1919), dealt with Prison conditions and prisoners rights before Independence in India.

• Justice A.N.Mulla, in his Report of the All India Jails Reforms Committee, 1980-83, has given certain recommendations for the prison administration and protection of the prisoners and implementing their rights.


• Chiranjivi J. Nirmal, “Human Rights in India: Historical, Social and Political Perspectives” (Law in India), OUP India (1999), deals with the complex issue of Human rights from many different perspectives, and cover such diverse issues as the rights of prisoners and refugees, the constitutional context of human rights, organizational bases of human rights and the NHRC.


• Nitya Ramakrishanan, “In Custody: Law, Impunity and Prisoner Abuse in South Asia”, (SAGE Law), In Custody examines the professed and actual commitment to custodial justice on the part of six South Asian countries. India, Pakistan, Bangladesh, Nepal, Sri Lanka and Afghanistan have all been affected by the geopolitics of colonialism. Nineteenth century Europe is often simplistically seen as the ideological source of the rights discourse in South Asia.

• Jagmohan Singh, in his book “Right to Speedy Justice for Under Trial Prisoners”, Deep & Deep Publications, 1997, deals with the undertrail prisoners having right to speedy trail of their cases, the constitutional guarantee for the implementation of their rights.


1.8 Scheme of Study

The entire study is divided into six chapters.

Chapter I title introduction deals with General Introduction. Significance of the study, Objectives, Hypotheses formulated, Methodology followed, Review of Literature and Scheme of the study.


Chapter III dealing with is Human rights of prisoners – International perspective instruments for Protection of Prisoners Human Rights in International & National Perspective. Prisoners Rights and their Protection in International Scenario and International Conventions, relating to it on National perspective Protection Measures of Prisoners in India, Role of prison Administration in Protecting Human Rights of Prisoners in India and the procedure adopted by prison administration to protect these rights.

Chapter IV Protection of Human Rights of prisoners – constitution and judicial perspective is which deals with Constitutional Provisions and Judicial intervention in Protection of Human Rights of Prisoners in India. In this chapter Constitutional Provisions in India, Directive Principles of state Policy, the related Legislations, Human Rights Legislations and Prisoners Legislations are discussed, the intervention of Apex court, when Prisoners Human Rights are being violated and Analysis of the cases.

Chapter V is analysis of data which covers survey of protection of human rights of prisoners in Kadapa, Nellore and Charlapalli prisoners and analysis of the data is also carried out in the same chapter.

Chapter VI is the final chapter which gives conclusion to the work. It lists out various suggestions for protecting rights of the prisoners in general and human rights
in specific also recommendation has been put forth by the researcher regarding the conditions of the prisons in India and how to improve them when a man on becoming a prisoner, whether convict or undertrial as he does not cease to be human being after he being a prisoner.